

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JERRY ANDERSON,

Plaintiff

v.

Case No. 2:17-12676

District Judge Victoria A. Roberts

Magistrate Judge Anthony P. Patti

COLTER FURST,  
MICHAEL THOMAS, and  
NATHAN ELLIS

Defendants.

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**ORDER GRANTING IN PART AND DENYING IN PART: (1)  
PLAINTIFF'S MOTION FOR THE U.S. MARSHAL TO SERVE  
SUBPOENAS (DE 80); (2) DEFENDANTS' MOTON FOR EXTENSION OF  
DISCOVERY CUTOFF (DE 79); AND (3) DEFENDANTS' EXPEDITED  
MOTION TO COMPEL PLAINTIFF'S DEPOSITION AND TO EXTEND  
TIME TO FILE MOTION FOR SUMMARY JUDGMENT ON THE BASIS  
OF QUALIFIED IMMUNITY (DE 82), AND DIRECTING THE USMS TO  
SERVE SUBPOENAS AS INDICATED HEREIN**

Plaintiff, a state prisoner who is proceeding *in forma pauperis*, brings this prisoner civil rights lawsuit against three defendants, Colter Furst, Michael Thomas and Nathan Ellis, all Michigan State Police Troopers, alleging they violated his rights under the Fourth Amendment by using excessive force during his arrest on September 4, 2015. (DE 1.) He seeks injunctive and declaratory

relief, in addition to compensatory and punitive damages. (*Id.*) All Defendants have been served and have filed their Answer. (DE 14.)

### **A. Current Scheduling Order**

The scheduling order in this action currently has a discovery cut-off of December 17, 2018, a deadline of January 14, 2019 by which to file a motion for summary judgment on the basis of qualified immunity, and a deadline of March 15, 2019 by which to file all other motions for summary judgment, if any. (DE 63.)

### **B. Pending Motions**

On December 17, 2018, the date of the current discovery deadline, Defendants filed a motion for extension of the discovery cut-off, seeking an extension of time to January 4, 2019, to allow Defendants to take Plaintiff's deposition and to allow Defendants to answer Plaintiff's recently served interrogatories. (DE 79.)

On January 7, 2019, Plaintiff filed a motion for the U.S. Marshal to serve four subpoenas beyond the discovery cutoff "for good cause where he failed to act because of excusable neglect." (DE 80.) Plaintiff asserts that he requested subpoenas in November and December 2018, but did not receive the subpoenas until "on or about 12-26-18." (*Id.*) Plaintiff requests to have the four subpoenas served by the U.S. Marshal. (*Id.*)

On January 14, 2019, the date of the current dispositive motion deadline, Defendants filed an expedited motion to compel Plaintiff's deposition and to extend the time to file a motion for summary judgment on the basis of qualified immunity. (DE 82.) Defendants argue that Plaintiff's deposition had to be rescheduled "due to other commitments both professionally and personally," and that when Plaintiff appeared for his scheduled January 3, 2019 deposition, he refused to answer questions because discovery closed on December 17, 2018 and the motion to extend had not yet been ruled on. (*Id.*) Defendants therefore seek an order compelling Plaintiff's deposition and to extend the deadline to file motions for summary judgment until 14 days after Plaintiff's deposition. (*Id.*)

### **C. Order**

For good cause shown, Plaintiff's motion for the U.S. Marshal to serve subpoenas and Defendants' motion for extension of discovery cutoff (DE 79) and expedited motion to compel Plaintiff's deposition and to extend time to file motion for summary judgment on the basis of qualified immunity (DE 82) are **GRANTED IN PART AND DENIED IN PART** as follows:

- Defendants may take Plaintiff's deposition on or before **FEBRUARY 4, 2019**. Defendants shall be permitted to take the deposition of Plaintiff for all purposes allowed by the Federal Rules of Civil Procedure, and the deposition may occur either in person, by telephone, or via video teleconference, at Defendants' option and consistent with the requirements and needs of Plaintiff's place of incarceration.

- Further, the Court **DIRECTS** the USMS to serve the four subpoenas at ECF No. 80, Page IDs 403-418, on the persons/entities at the addresses listed on each of the subpoenas.<sup>1</sup>
- However, the December 17, 2018 discovery cutoff is otherwise not extended for any other purpose.
- Defendants must file any motion to dismiss under Fed. R. Civ. P. 12 or any motion raising the defense of qualified immunity on or before **FEBRUARY 25, 2019**.
- The parties shall file all other dispositive motions, if any, on or before **AUGUST 1, 2019**.

**IT IS SO ORDERED.**

Dated: January 14, 2019

s/*Anthony P. Patti*

Anthony P. Patti

UNITED STATES MAGISTRATE JUDGE

**Certificate of Service**

I hereby certify that a copy of the foregoing document was sent to parties of record on January 14, 2019, electronically and/or by U.S. Mail.

s/Michael Williams

Case Manager for the

Honorable Anthony P. Patti

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<sup>1</sup> Due to the partial government shut down, however, there is no guarantee that the USMS will be able to carry out this service expeditiously, and there may well be a delay or backlog.